IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 36070 of 2007(R)

AGAINST THE ORDER IN EP.NO.12/2007 IN
OS.34/2006 of SUB COURT, TIRUR

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PETITIONER:

T.K.ALIKUTTY, S/O.THONIKKADAVATH
MOHAMMED HAJI, AGED 48 YEARS, ATHAVANAD AMSOM,
DESOM P.O.ATHAVANAD, PIN 676 310, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

PAKATH MANAKKAL SANKARAN BHATATHIRIPAD,
S/O.VASUDEVAN BHATATHIRIPAD, AGED 59 YEARS,
KURUMBATHOOR AMSOM, KOODASSERY DESOM, TIRUR TALUK,
MALAPPURAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 36070 OF 2007

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Dated this the 6th day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Tirur in E.P.12/07 in O.S.34/06. The E.P. is one for realisation of the amount by sale of the property shown in the execution schedule. The grievance of the writ petitioner who is the judgment debtor is to the effect that the property is having a total extent of 24 cents and is situated in an area where the value of the property will be at least 1,00,000/- per cent. The Court below has ordered sale of the property for realisation of the amount of Rs.7.5 lakhs only. The learned counsel had given the objections filed by him for perusal. It is very vague. But he has denied everything including the fact that the description of the property is incorrect. The particulars shown in the draft proclamation is incorrect and that the properties cannot be sold in auction. The Apex Court as well as this Court had laid

down that as far as possible only the least extent of the property which is necessary for the discharge of the decree debt alone be sold so as to avoid unnecessary hardship and embarrassment to the judgment debtor. So the Court is expected to apply its mind in every case even though there is lack of pleadings, to do substantial justice to the parties. I, therefore, interfere with the order passed by the Court below and direct the writ petitioner herein to file a detailed counter statement in the form of an additional counter. After giving copy to the decree holder, the Court shall conduct an enquiry and then fix the upset price and proceed with the matter in accordance with law. Needless to say the Court has also to apply its mind to find out whether there is need to sell the entire property or any portion of the property for discharging the decree debt, is sufficient.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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